

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

SANDRA FAYE VIRGIL,

Plaintiff,

vs.

CLARK HOUSING AUTHORITY, et al,

Defendants.

Case No. 2:13-cv-01050-APG-NJK

**ORDER AND
REPORT AND RECOMMENDATION**

Application to Proceed *In Forma
Pauperis* (Dkt. #1)

Plaintiff Sandra Virgil is proceeding in this action *pro se*, has requested authority pursuant to 28 U.S.C. § 1915 to proceed *in forma pauperis*, and submitted a Complaint (Dkt. #1) on June 13, 2013. This proceeding was referred to this court by Local Rule IB 1-9.

I. *In Forma Pauperis* Application

Plaintiff has submitted the affidavit required by § 1915(a) showing an inability to prepay fees and costs or give security for them. Accordingly, the request to proceed *in forma pauperis* will be granted pursuant to 28 U.S.C. § 1915(a). The court will now review Plaintiff's complaint.

II. Screening the Complaint

Upon granting a request to proceed *in forma pauperis*, a court must additionally screen a complaint pursuant to § 1915(a). Federal courts are given the authority dismiss a case if the action is legally "frivolous or malicious," fails to state a claim upon which relief may be granted, or seeks monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915(e)(2). When a court dismisses a complaint under § 1915(a), the plaintiff should be given leave to amend the complaint with directions as to curing its deficiencies, unless it is clear from the face of the complaint that the deficiencies could not be cured by amendment. *See Cato v. United States*, 70 F.3d 1103, 1106 (9th Cir. 1995).

....

1 A properly pled complaint must provide a short and plain statement of the claim showing that the
2 pleader is entitled to relief.” Fed.R.Civ.P. 8(a)(2); *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555
3 (2007). Although Rule 8 does not require detailed factual allegations, it demands “more than labels and
4 conclusions” or a “formulaic recitation of the elements of a cause of action.” *Ashcroft v. Iqbal*, 129 S.Ct.
5 1937, 1949 (2009) (citing *Papasan v. Allain*, 478 U.S. 265, 286 (1986)). Allegations of a *pro se* complaint
6 are held to less stringent standards than formal pleading drafted by lawyers. *Haines v. Kerner*, 404 U.S.
7 519, 520 (1972) (per curiam). The court must accept as true all well-pled factual allegations contained in
8 the complaint, but the same requirement does not apply to legal conclusions. *Iqbal*, 129 S.Ct. at 1950.
9 Mere recitals of the elements of a cause of action, supported only by conclusory allegations, do not suffice.
10 *Id.* at 1949. Secondly, where the claims in the complaint have not crossed the line from plausible to
11 conceivable, the complaint should be dismissed. *Twombly*, 550 U.S. at 570.

12 A complaint, or portion thereof, should be dismissed for failure to state a claim upon which relief
13 may be granted “if it appears beyond a doubt that the plaintiff can prove no set of facts in support of [her]
14 claims that would entitle [her] to relief.” *Buckey v. Los Angeles*, 968 F.2d 791, 794 (9th Cir. 1992). A
15 complaint may be dismissed as frivolous if it is premised on a nonexistent legal interest or delusional
16 factual scenario. *Neitzke v. Williams*, 490 U.S. 319, 327-28 (1989). Moreover, “a finding of factual
17 frivolousness is appropriate when the facts alleged rise to the level of the irrational or the wholly incredible,
18 whether or not there are judicially noticeable facts available to contradict them.” *Denton v. Hernandez*,
19 504 U.S. 25, 33 (1992).

20 The facts that Plaintiff alleges in her complaint are completely incomprehensible. 18 U.S.C. §
21 1915(d) gives the court the power to dismiss “claims whose factual contentions are clearly baseless.”
22 *Neitzke*, 490 U.S. at 327-28. Plaintiff has failed to state any sort of cognizable claim, or even any claim
23 at all. The court cannot decipher any logical set of facts in her submission, or any rights that may have
24 been violated. The court therefore concludes that this case is frivolous because it lacks an arguable basis
25 in law and fact. *See Neitzke*, 490 U.S. at 325. Since Plaintiff’s complaint is factually frivolous and does
26 not set forth a plausible claim, it should be dismissed and, since allegations of other facts would not cure
27 the deficiencies, Plaintiff is not entitled to an opportunity to amend her complaint.

28

Accordingly, and for good cause shown,

IT IS ORDERED that Plaintiff's Motion/Application to Proceed *In Forma Pauperis* (Dkt. #1) is GRANTED.

IT IS FURTHER ORDERED that Plaintiff is permitted to maintain this action to conclusion without the necessity of prepayment of any additional fees or costs or the giving of a security therefor. This Order granting leave to proceed *in forma pauperis* shall not extend to the issuance of subpoenas at government expense.

RECOMMENDATION

IT IS HEREBY RECOMMENDED that the Clerk of Court be ordered to file the Complaint (Dkt. #1-1)

IT IS FURTHER RECOMMENDED that the Complaint (Dkt. #1-1) be dismissed with prejudice, as "it is clear from the face of the complaint that the deficiencies could not be cured by amendment." *See Cato*, 70 F.3d at 1106.

NOTICE

Pursuant to Local Rule IB 3-2, any objection to this Report and Recommendation must be in writing and filed with the Clerk of the Court within fourteen (14) days after service of this Notice. The Supreme Court has held that the courts of appeal may determine that an appeal has been waived due to the failure to file objections within the specified time. *Thomas v. Arn*, 474 U.S. 140, 142 (1985). This Circuit has also held that (1) failure to file objections within the specified time and (2) failure to properly address and brief the objectionable issues waives the right to appeal the District Court's order and/or appeal factual issues from the order of the District Court. *Martinez v. Ylst*, 951 F.2d 1153, 1157 (9th Cir. 1991); *Britt v. Simi Valley United Sch. Dist.*, 708 F.2d 452, 454 (9th Cir. 1983).

Dated this 24th day of June, 2013.



 NANCY J. KOPPE
 UNITED STATES MAGISTRATE JUDGE